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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES

Author: Woolner, Rhodora

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LSA(s):

Co-Counsel:

Counsel LSA(s):

Distribution List: Woolner, Rhodora (ENRD);Lattin, Sue (ENRD);Rose, Robert (ENRD);Reed, Jason (ENRD);True, Michael (ENRD);Goldsmith, Reese (ENRD)

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1 Anthony Barnes (Bar No. 199048)
2 Jason Flanders (Bar No. 238007)
3 Email: amb@atalawgroup.com
4 AQUA TERRA AERIS LAW GROUP LLP
5 828 San Pablo Ave., Ste. 115B
6 Albany, CA 94706
7 Phone: (415) 326-3173

8 *Attorneys for Plaintiff*
9 HUMBOLDT BAYKEEPER

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 HUMBOLDT BAYKEEPER, a California non-
13 profit association,

14 Plaintiff,

15 v.

16 HUMBOLDT SANITATION CO., a California
17 corporation, HUMBOLDT RECYCLING, LLC, a
18 California limited liability company,

19 Defendants.

Civil Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES**

**(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)**

DEPT. OF JUSTICE, ENV.
ENVIRONMENT DIVISION
16 DEC -8 P2:53

Humboldt Baykeeper ("Baykeeper" or "Plaintiff"), by and through its counsel, hereby alleges:

I. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provision of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* ("Clean Water Act" or "CWA"). *See* 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws of the United States).

2. On September 27, 2016, Baykeeper issued a 60-day notice letter ("Notice Letter") to Humboldt Sanitation Co, and Humboldt Recycling, LLC (collectively "Humboldt Sanitation Recycle" or "Defendants") as Humboldt Sanitation & Recycle, noting the separate business entities and their single registration with the State Water Resources Control Board as Humboldt Sanitation Recycle, Waste Discharger Identification Number 1 121012825. Upon information and belief, these two entities share the same ownership. Both entities have the same President and Agent for Service of Process, and both entities share the same Vice President. The Notice Letter informed Defendants of their violations of California's General Permit for Discharges of Storm Water Associated with Industrial Activities (*National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ*) ("1997 Permit") and Order No. 2014-0057-DWQ ("2015 Permit") (collectively, hereinafter referred to as the "Storm Water Permit") and the Clean Water Act at the following waste facility: Humboldt Sanitation Recycle, located at 2585 Central Avenue, in unincorporated McKinleyville, Humboldt County, CA 95519 ("the HSR Facility"). The Notice Letter informed Defendants of Baykeeper's intent to file suit against Defendants to enforce the Storm Water Permit and the Clean Water Act.

3. The Notice Letter was sent to the President, Owner, and current registered Agent for Service of Process of Humboldt Sanitation Co. and Humboldt Recycling, LLC, Greg Cain, and separately to the Vice President of Humboldt Sanitation Co. and Humboldt Recycling, LLC, Tasha Eisner, as the owners and operators of the Facility. as required by 40 C.F.R. § 135.2(a)(1). The Notice Letter was also sent to the Administrator of the United States Environmental Protection Agency

1 (“EPA”), the Administrator of EPA Region IX, the Executive Director of the State Water Resources
2 Control Board (“State Board”), and the Executive Officer of the Regional Water Quality Control Board,
3 North Coast Region, (“Regional Board”) as required by Section 505(b) of the CWA, 33 U.S.C. §
4 1365(b)(1)(A). The Notice Letter is attached hereto as Exhibit A and is incorporated herein by reference.

5 4. More than sixty (60) days have passed since the Notice Letter was served on the
6 Defendants and the State and Federal agencies. Baykeeper is informed and believes, and thereon alleges,
7 that neither the EPA nor the State of California has commenced or is diligently prosecuting an action to
8 redress the violations alleged in the Notice Letter and in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B).
9 This action is not barred by any prior administrative penalty under Section 309(g) of the CWA, 33
10 U.S.C. § 1319(g).

11 5. Venue is proper in the Northern District of California pursuant to Section 505(c)(1) of the
12 CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this judicial
13 district.

14 6. Plaintiff also seeks relief from Defendants’ violations of the procedural and substantive
15 requirements of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

16 **II. INTRODUCTION**

17 7. With every rainfall event, hundreds of millions of gallons of polluted rainwater,
18 originating from industrial operations such as the Facility referenced herein, pour into the storm drains
19 and local waterways. The consensus among regulatory agencies and water quality specialists is that
20 stormwater pollution accounts for more than half of the total pollution entering marine and river
21 environments each year. These surface waters, known as Receiving Waters, are ecologically sensitive
22 areas. Although pollution and habitat destruction have drastically diminished once-abundant and varied
23 fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-
24 invertebrate and invertebrate species. Stormwater and non-stormwater contain sediment, heavy metals,
25 such as aluminum, iron, chromium, copper, lead, mercury, nickel, and zinc, as well as, high
26 concentrations of nitrate and nitrite, and other pollutants. Exposure to polluted stormwater harms the
27 special aesthetic and recreational significance that the surface waters have for people in the surrounding
28 communities. The public’s use of the surface waters exposes many people to toxic metals and other

1 contaminants in stormwater and non-stormwater discharges. Non-contact recreational and aesthetic
2 opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving
3 Waters.

4 8. High concentrations of total suspended solids ("TSS") degrade optical water quality by
5 reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to
6 alter predator-prey relationships (for example, turbid water may make it difficult for fish to hunt prey).
7 Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to
8 aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons
9 ("PAHs"), are absorbed onto TSS. Thus, higher concentrations of TSS result in higher concentrations of
10 toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended
11 solids, have been shown to negatively impact species richness, diversity, and total biomass of filter
12 feeding aquatic organisms on bottom surfaces.

13 9. Stormwater discharged with high pH can damage the gills and skin of aquatic organisms
14 and cause death at levels above 10 standard units. The pH scale is logarithmic and the solubility of a
15 substance varies as a function of the pH of a solution. A one whole unit change in standard units ("s.u.")
16 represents a tenfold increase or decrease in ion concentration. If the pH of water is too high or too low,
17 the aquatic organisms living within it will become stressed or die.

18 10. This complaint seeks a declaratory judgment, injunctive relief, the imposition of civil
19 penalties, and the award of costs, including attorney and expert witness fees, for Defendants' substantive
20 and procedural violations of the Storm Water Permit and the Clean Water Act resulting from
21 Defendants' operations at the HSR Facility.¹

22 11. Baykeeper specifically alleges violations regarding Defendants' discharge of pollutants
23 from the HSR Facility into waters of the United States; violations of the filing, monitoring and reporting,
24 and best management practice requirements; and violations of other procedural and substantive
25 requirements of the Storm Water Permit and the Clean Water Act, are ongoing and continuous.
26
27
28

¹ The HSR Facility is fully described in Section V below.

1 **III. PARTIES**

2 **A. Humboldt Baykeeper**

3 12. Plaintiff Humboldt Baykeeper (“Baykeeper” or “plaintiff”) is a non-profit association
4 dedicated to safeguarding coastal resources for the health, enjoyment, and economic strength of the
5 Humboldt Bay community through education, scientific research, and enforcement of laws to fight
6 pollution, with a focus on the Humboldt Bay watershed and coastal waters from Trinidad Head to the
7 Eel River, including Widow White Creek and the Mad River, into which Humboldt Sanitation Recycle
8 discharges polluted stormwater and non-stormwater. Baykeeper’s office is located at 1385 8th St #228,
9 Arcata, CA 95521.

10 13. Baykeeper has over 1000 members who live and/or recreate in and around the Humboldt
11 Bay watershed and coastal waters. Baykeeper is dedicated to the preservation, protection, and defense of
12 the environment, wildlife, and natural resources of local surface waters. To further these goals,
13 Baykeeper actively seeks federal and state agency implementation of the Clean Water Act and, where
14 necessary, directly initiates enforcement actions on behalf of itself and others.

15 14. Baykeeper’s members use and enjoy the waters near the Facility, including Humboldt
16 Bay, to sail or boat, swim, kayak, windsurf, birdwatch, picnic, fish, hike, conduct scientific study and
17 research, and/or for aesthetic enjoyment.

18 15. Defendants’ failure to comply with the procedural and substantive requirements of the
19 Storm Water Permit and/or the Clean Water Act, including but not limited to Defendants’ discharge of
20 polluted stormwater and non-stormwater from the HSR Facility, negatively impacts and impairs
21 Baykeeper’s members’ use and enjoyment of these waters.

22 16. The interests of Baykeeper’s members have been, are being, and will continue to be
23 adversely affected by Defendants’ failure to comply with the Clean Water Act and the Storm Water
24 Permit. The relief sought herein will redress the harms to Plaintiff caused by Defendants’ activities.

25 17. Continuing commission of the acts and omissions alleged herein will irreparably harm
26 Baykeeper’s members, for which harm they have no plain, speedy, or adequate remedy at law.

B. The Owners and Operators of the Facility

18. Baykeeper is informed and believes, and thereon alleges, that Humboldt Sanitation Co. is a corporation formed under the laws of the State of California. Baykeeper is informed and believes, and thereon alleges, that the registered agent for service of process for Humboldt Sanitation Co. is Gregory Dean Cain, at 2585 Central Avenue., McKinleyville, CA 95519.

19. Baykeeper is informed and believes, and thereon alleges, that Humboldt Recycle, LLC is a limited liability corporation formed under the laws of the State of California. Baykeeper is informed and believes, and thereon alleges, that the registered agent for service of process for Humboldt Recycle, LLC is Greg Cain, at 2585 Central Avenue., McKinleyville, CA 95519.

20. Baykeeper is informed and believes, and thereon alleges, that Greg Cain, Tasha Eisner, Humboldt Sanitation Co., and Humboldt Recycle, LLC, are owners and/or operators of the Facility.

21. Collectively, Baykeeper refers to Gregory Dean Cain, Greg Cain, Tasha Eisner, Humboldt Sanitation Co., and Humboldt Recycle, LLC as "the Owners and/or Operators," defined herein as the owners and/or operators of the Facilities.

IV. STATUTORY BACKGROUND

A. The Clean Water Act

22. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless the discharge complies with various enumerated sections of the CWA. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(b).

23. Section 402(p) of the CWA establishes a framework for regulating municipal and industrial stormwater discharges under the NPDES program. 33 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by Section 402(p) to regulate industrial stormwater discharges through individual permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all industrial stormwater dischargers. 33 U.S.C. § 1342.

24. Section 301(b) of the Clean Water Act requires that, by March 31, 1989, all point source dischargers, including those discharging polluted stormwater, must achieve technology-based effluent

1 limitations by utilizing Best Available Technology Economically Achievable (“BAT”) for toxic and
2 nonconventional pollutants and the Best Conventional Pollutant Control Technology (“BCT”) for
3 conventional pollutants. *See* 33 U.S.C. § 1311(b); 40 C.F.R. § 125.3(a)(2)(ii)-(iii).

4 25. The Clean Water Act requires point source discharges of pollutants to navigable waters
5 be regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R. § 122.26(c)(1).

6 26. The “discharge of a pollutant” means, among other things, “any addition of any pollutant
7 to navigable waters from any point source.” 33 U.S.C. § 1362(12); *see* 40 C.F.R. § 122.2.

8 27. The term “pollutant” includes “dredged spoil, solid waste, incinerator residue, sewage,
9 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat,
10 wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste
11 discharged into water.” 33 U.S.C. § 1362(6); *see* 40 C.F.R. § 122.2.

12 28. The term “point source” means any “discernible, confined and discrete conveyance,
13 including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,
14 rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which
15 pollutants are or may be discharged.” 33 U.S.C. § 1362(14); *see* 40 C.F.R. § 122.2.

16 29. “Navigable waters” means “the waters of the United States.” 33 U.S.C. 1362(7).

17 30. “Waters of the United States” are defined as “navigable waters,” and “all waters which
18 are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce,
19 including waters which are subject to the ebb and flow of the tide.” 33 U.S.C. § 1362(7).

20 31. The EPA promulgated regulations for the Section 402 NPDES permit program defining
21 “waters of the United States.” *See* 40 C.F.R. § 122.2. The EPA interprets waters of the United States to
22 include not only traditionally navigable waters but also other waters, including waters tributary to
23 navigable waters, wetlands adjacent to navigable waters, and other waters including intermittent streams
24 that could affect interstate commerce.

25 32. The Clean Water Act confers jurisdiction over non-navigable waters that are tributaries to
26 traditionally navigable waters where the non-navigable water at issue has a significant nexus to the
27 navigable water. *See Rapanos v. United States*, 547 U.S. 715 (2006); *see also N. Cal. River Watch v.*
28 *City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007).

1 33. A significant nexus is established if the “[receiving waters], either alone or in
2 combination with similarly situated lands in the region, significantly affect the chemical, physical, and
3 biological integrity of other covered waters.” *Rapanos*, 547 U.S. at 779; *N. Cal. River Watch*, 496 F.3d
4 at 999-1000.

5 34. A significant nexus is also established if waters that are tributary to navigable waters
6 have flood control properties, including functions such as the reduction of flow, pollutant trapping, and
7 nutrient recycling. *Rapanos*, 547 U.S. at 782; *N. Cal. River Watch*, 496 F.3d at 1000-1001.

8 35. Section 505(a)(1) and Section 505(f) of the Clean Water Act provide for citizen
9 enforcement actions against any “person” who is alleged to be in violation of an “effluent standard or
10 limitation . . . or an order issued by the Administrator or a State with respect to such a standard or
11 limitation.” *See* 33 U.S.C. §§ 1365(a)(i) and 1365(f).

12 36. The Defendants are “person[s]” within the meaning of Section 502(5) of the Clean Water
13 Act, 33 U.S.C. § 1362(5).

14 37. An action for injunctive relief is authorized under Section 505(a) of the CWA, 33 U.S.C.
15 § 1365(a).

16 38. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to
17 \$37,500 per day, pursuant to Sections 309(d) and 505 of the CWA. *See* 33 U.S.C. § 1319(d) and
18 1365(a); Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4.

19 39. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing or
20 substantially prevailing parties to recover litigation costs, including attorneys’ fees, experts’ fees, and
21 consultants’ fees.

22 **B. California’s Storm Water Permit**

23 40. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows each state to administer its own
24 EPA-approved NPDES permit program for regulating the discharge of pollutants, including discharges
25 of polluted stormwater. States with approved NPDES permit programs are authorized by Section 402(b)
26 to regulate industrial stormwater discharges through individual NPDES permits issued to dischargers
27 and/or through the issuance of a statewide general NPDES permit applicable to all industrial stormwater
28 dischargers. *See id.*

1 41. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator of the EPA has
2 authorized California to issue NPDES permits, including general NPDES permits. California has
3 designated the State Water Resources Control Board (“State Board”) and the Regional Water Quality
4 Control Boards to administer its NPDES program. *City of Rancho Cucamonga v. Regional Water*
5 *Quality Control Bd.*, 135 Cal. App. 4th 1377, 1380-81 (2006). In California, the State Board is charged
6 with regulating pollutants to protect California’s water resources. *See* Cal. Water Code § 13001.

7 42. The Storm Water Permit is a statewide general NPDES permit issued by the State Board
8 pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1342(b), (p), and 40 C.F.R. § 123.25. Violations of
9 the Storm Water Permit are also violations of the CWA. 1997 Permit, Section C(1); 2015 Permit,
10 Section XXI(A).

11 43. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt Water Quality
12 Standards, including water quality objectives and beneficial uses for navigable waters of the United
13 States. The CWA prohibits discharges from causing or contributing to a violation of such state Water
14 Quality Standards. *See* 33 U.S.C. § 1313(b)(1)(c); 40 C.F.R. §§ 122.4(a), (d); 40 C.F.R. §§
15 122.44(D)(1).

16 44. The State Board elected to issue a statewide general permit for industrial discharges. The
17 State Board issued the Storm Water Permit on or about November 19, 1991, modified the Storm Water
18 Permit on or about September 17, 1992, and reissued the Storm Water Permit on or about April 17,
19 1997, pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

20 45. On July 1, 2015 the 2015 Permit became effective, and was issued as NPDES No.
21 CAS000001 (the same NPDES permit number as the 1997 Permit). The 2015 Permit superseded the
22 1997 Permit except for enforcement purposes. The substantive requirements of the 2015 Permit are the
23 same or more stringent than the requirements of 1997 Permit.

24 46. In order to discharge stormwater lawfully in California, industrial dischargers must
25 secure coverage under the Storm Water Permit and comply with its terms, or obtain and comply with an
26 individual NPDES permit. 1997 Permit, p. II-V; 2015 Permit, Section I(A) (Findings 8, 12). Prior to
27 beginning industrial operations, dischargers are required to apply for coverage under the Storm Water
28 Permit by submitting a Notice of Intent to Comply with the Terms of the General Permit to Discharge

1 Storm Water Associated with Industrial Activity (“NOI”) to the State Board. *See* 1997 Permit, Provision
2 E(1), Finding 3; 2015 Permit, Section I(A) (Finding 17), Section II(B).

3 47. Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), provides for citizen enforcement
4 actions against any “person” who is alleged to be in violation of an “effluent standard or limitation . . .
5 or an order issued by the Administrator or a State with respect to such a standard or limitation.” *See* 33
6 U.S.C. §§ 1365(a)(i), 1365(f).

7 **C. The Storm Water Permit’s Discharge Prohibitions, Effluent Limitations, and**
8 **Receiving Water Limitations**

9 48. The Storm Water Permit contains certain absolute prohibitions. The Storm Water Permit
10 prohibits the direct or indirect discharge of materials other than stormwater (“non-stormwater
11 discharges”), which are not otherwise authorized by an NPDES permit, to the waters of the United
12 States. 1997 Permit, Discharge Prohibition A(1); 2015 Permit, Discharge Prohibition III(B).

13 49. Effluent Limitation (B)(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015
14 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in
15 stormwater discharges through the implementation of Best Available Technology Economically
16 Achievable (“BAT”) for toxic or non-conventional pollutants, and Best Conventional Pollutant Control
17 Technology (“BCT”) for conventional pollutants. Toxic pollutants are listed at 40 C.F.R. § 401.15 and
18 include copper, lead, and zinc, among others. Conventional pollutants are listed at 40 C.F.R. § 401.16
19 and include biological oxygen demand (“BOD”), TSS, oil and grease (“O&G”), pH, and fecal coliform.

20 50. Discharge Prohibition (A)(2) of the 1997 Permit and Discharge Prohibition III(C) of the
21 2015 Permit prohibits stormwater discharges that cause or threaten to cause pollution, contamination, or
22 nuisance.

23 51. Under the CWA and the Storm Water Permit, dischargers must employ Best
24 Management Practices (“BMPs”) that constitute BAT and BCT to reduce or eliminate stormwater
25 pollution. 33 U.S.C. § 1311(b); 1997 Permit, Effluent Limitation B(3); 2015 Permit, Effluent Limitation
26 V(A). EPA has developed benchmark levels (“Benchmarks”) that are objective guidelines to evaluate
27 whether a permittee’s BMPs achieve compliance with the BAT/BCT standards. *See* Final National
28 Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From

1 Industrial Activities ("Multi-Sector Permit"), 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); Multi-Sector
2 Permit, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); Multi-Sector Permit, 65 Fed. Reg. 64,746, 64,766-
3 67 (Oct. 30, 2000).

4 52. The EPA established Parameter Benchmark Values for the following parameters, among
5 others, are as follows: pH – 6.0 – 9.0 standard units "s.u."; TSS – 100 mg/L; lead ("Pb") – 0.069 mg/L;
6 iron – 1.0 mg/L; Chemical Oxygen Demand ("COD") – 120 mg/L; aluminum ("Al") – 0.75 mg/L;
7 copper ("Cu") – 0.0123 mg/L; and zinc – 0.13 mg/L. The 2015 Permit contains Numeric Action Levels
8 ("NALs") for these same parameters that generally mirror the Benchmark Values.

9 53. The 2015 Permit includes NALs. 2015 Permit, Section I(M) (Finding 62). During the
10 public commenting period, the State Board stated that "NALs are not designed or intended to function as
11 numeric technology-based effluent limitations." State Board 2012 Draft Industrial General Permit
12 Response to Comments, Response #6 to Comment #12; *see also* 2015 Permit Section I(M) (Finding 63).

13 54. Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation
14 VI(B) of the 2015 Permit prohibit stormwater discharges from adversely impacting human health or the
15 environment.

16 55. Discharges with pollutant levels that exceed levels known to adversely impact aquatic
17 species and the environment are violations of the Storm Water Permit's Receiving Water Limitation.

18 56. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation
19 VI(A) of the 2015 Permit prohibit stormwater discharges that cause or contribute to an exceedance of
20 any "applicable Water Quality Standard in a Statewide Water Quality Control Plan or the applicable
21 Regional Board's Basin Plan."

22 57. Water Quality Standards ("WQS") are pollutant concentration levels determined by the
23 State Board, the various regional boards, and the EPA to be protective of the beneficial uses of the
24 waters that receive polluted discharges.

25 58. The State of California regulates water quality through the State Board and the nine
26 Regional Boards. Each Regional Board maintains a separate Water Quality Control Plan which contains
27 WQS for water bodies within its geographic area.
28

59. The State Water Quality Control Board, North Coast Region (May 2011), has issued the Water Quality Control Plan for the North Coast Region ("the Basin Plan") to establish water quality objectives, implementation plans for point and non-point source discharges, prohibitions, and to further statewide plans and policies. The Basin Plan provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." The Basin Plan also provides that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms." The Basin Plan also establishes that the dissolved oxygen levels of the stretch of the Mad River, to which the Facility's discharges flow from Widow White Creek following discharge from the facility, may not be depressed below 7.0 mg/L. Basin Plan, Table 3-1. The Basin Plan sets forth water quality objectives for dissolved metals, such as arsenic, zinc, copper, lead, and mercury. *Id.*, Table 3.2. The Basin Plan also states that the waters shall not receive sediment, settleable materials, or suspended materials that cause nuisance or adversely affect the waters' beneficial uses. *Id.*

60. While the Basin Plan does not specify beneficial uses for Widow White Creek, it does identify present and potential beneficial uses for the Mad River, including but not limited to the following existing beneficial uses for Mad River: municipal water supply, agricultural supply, industrial service supply, estuarine habitat, freshwater replenishment, groundwater recharge, navigation, hydropower generation, commercial and sport fishing, wildlife habitat, cold freshwater habitat, spawning, migration, aquaculture, shellfish harvesting, Native American culture, and contact and non-contact water recreation.

61. Surface waters that cannot support the Beneficial Uses of those waters listed in the Basin Plan are designated as impaired water bodies pursuant to Section 303(d) of the Clean Water Act. According to the 2010 303(d) List of Impaired Water Bodies the Mad River is listed for the following CWA 303(d) impairments: Turbidity, Sedimentation/Siltation, and Temperature, and Widow White Creek is listed for Indicator Bacteria.² Thus, the receiving waters for pollution from the Facility are impaired, and the Defendants' illegal discharges of pollutants above the WQS contributes to the continued impairment of the Mad River's beneficial uses.

² http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category4a_report.shtml & http://www.waterboards.ca.gov/water_issues/programs/tmdl/2012state_ir_reports/category5_report.shtml (last accessed on November 14, 2016.)

62. In addition, EPA has promulgated WQS for toxic priority pollutants in all California water bodies (“California Toxics Rule” or “CTR”), which apply to the Receiving Waters, unless expressly superseded by the Basin Plan. 65 Fed. Reg. 31,682 (May 18, 2000); 40 C.F.R. § 131.38.

63. The CTR sets forth lower numeric limits for zinc and other pollutants; CTR criteria can be as low as 0.067 mg/L for zinc in freshwater surface waters with water hardness calculation of 50 mg/L.³

64. The CTR includes further numeric criteria set to protect human health and the environment in the State of California. *See* Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California Factsheet, EPA-823-00-008 (April 2000), available at: <https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criteria-priority-toxic-pollutants-state>.

65. Discharges with pollutant levels in excess of the CTR criteria, the Basin Plan, and/or other applicable WQS are violations of Receiving Water Limitation C(2) of the 1997 Permit and Section VI(A) of the 2015 Permit.

D. The Storm Water Permit’s Storm Water Pollution Prevention Plan Requirements

66. Dischargers must develop and implement a Storm Water Pollution Prevention Plan (“SWPPP”) at the time industrial activities begin. 1997 Permit, Section A(1)(a) and E(2); 2015 Permit, Sections I(1) (Finding 54), X(B). The SWPPP must identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of stormwater and authorized non-stormwater discharges from the facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G). The SWPPP must identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of stormwater and authorized non-stormwater discharges from the facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G). The SWPPP must identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in stormwater and authorized non-stormwater discharges. 1997 Permit, Section A(2); 2015 Permit, Section X(H). The SWPPP must include BMPs that

³ The CTR numeric limits, or “criteria,” are expressed as dissolved metal concentrations in the CTR, but the Storm Water Permit required permittees to report their sample results as total metal concentrations. *See* 1997 Permit § B(10)(b); 2015 Permit, Attachment H at 18.

1 achieve pollutant discharge reductions attainable via BAT and BCT. 1997 Permit, Order Section A(2);
2 2015 Permit, Section I(D) (Finding 32), Section X(C).

3 67. The SWPPP must include: a narrative description and summary of all industrial activity,
4 potential sources of pollutants, and potential pollutants; a site map indicating the stormwater conveyance
5 system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact,
6 including the extent of pollution-generating activities, nearby water bodies, and pollutants control
7 measures; a description of stormwater management practices; a description of the BMPs to be
8 implemented to reduce or prevent pollutants in stormwater discharges and authorized non-stormwater
9 discharges; the identification and elimination of non-stormwater discharges; the location where
10 significant materials are being shipped, stored, received, and handled, as well as the typical quantities of
11 such materials and the frequency with which they are handled; a description of dust and particulate-
12 generating activities; and a description of individuals and their current responsibilities for developing
13 and implementing the SWPPP. 1997 Permit, Section A(1)-(10); 2015 Permit, Section X.

14 68. The objectives of the SWPPP are to identify and evaluate sources of pollutants associated
15 with industrial activities that may affect the quality of storm water discharges, to identify and implement
16 site-specific BMPs to prevent the exposure of pollutants to stormwater, and to reduce or prevent the
17 discharge of polluted stormwater from industrial Facilities. 1997 Permit, Section A(2); 2015 Permit,
18 Section X.

19 69. The Storm Water Permit requires the discharger to evaluate the SWPPP on an annual
20 basis and revise it as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Section
21 A(9); 2015 Permit, Section X(A)(9). The Storm Water Permit also requires that the discharger conduct
22 an annual comprehensive site compliance evaluation that includes a review of all visual observation
23 records, inspection reports, and sampling and analysis results, a visual inspection of all potential
24 pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review
25 and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and
26 maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to
27 implement the SWPPP. 1997 Permit, Sections A(9)(a)-(c); 2015 Permit, Section XV.

1 70. Section A(9)(d) of the 1997 Permit requires that the discharger submit an evaluation
2 report that includes an identification of personnel performing the evaluation, the date(s) of the
3 evaluation(s), necessary SWPPP revisions, a schedule for implementing SWPPP revisions, any incidents
4 of non-compliance and the corrective actions taken, and a certification that the discharger is in
5 compliance with the Storm Water Permit. Storm Water Permit, Section A(9)(d)(i)-(vi). If certification of
6 compliance cannot be provided, the discharger must explain in the evaluation report why the facility is
7 not in compliance with the Storm Water Permit. *Id.*, Section A(9)(d). The evaluation report shall be
8 submitted as part of the Annual Report specified in Section B(14) of the Storm Water Permit. *Id.*

9 71. The SWPPP and site maps must be assessed annually and revised as necessary to ensure
10 accuracy and effectiveness. 1997 Permit, Sections A(1), B(3)-(4); 2015 Permit, Sections I(J) (Finding
11 55), X(B)(1).

12 **E. The Storm Water Permit's Monitoring and Reporting Requirements**

13 72. The 1997 Permit required facility operators to develop and implement a monitoring and
14 reporting plan ("M&RP") when industrial activities begin at a facility. 1997 Permit, Sections B(1)-(2)
15 and E(3). The M&RP must have ensured that stormwater discharges are in compliance with the
16 Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the 1997
17 Permit. *Id.* at Section B(2). The M&RP must have ensured that practices at the facility to prevent or
18 reduce pollutants in stormwater and authorized non-stormwater discharges are evaluated and revised to
19 meet changing conditions at the facility, including revision of the SWPPP. *Id.*

20 73. The objectives of the M&RP are to ensure that BMPs have been adequately developed
21 and implemented, revised if necessary, and to ensure that stormwater and non-stormwater discharges are
22 in compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and
23 Receiving Water Limitations. 1997 Permit, Sections B(2)(a) and B(2)(b); 2015 Permit, Section XI.

24 74. The M&RP aids in the implementation and revision of the SWPPP and measures the
25 effectiveness of BMPs to prevent or reduce pollutants in stormwater discharges. *Id.*, 1997 Permit
26 Section B(2)(c) and B(2)(d).

1 75. The 2015 Permit requires facility operators to monitor and sample stormwater discharges
2 to ensure that the facility is complying with the terms of the permit. 2015 Permit, Sections I(J) (Findings
3 55-56) and XI.

4 76. Section B(2)(d) of the 1997 Permit and Section XI(A)(4) of the 2015 Permit require that
5 the M&RP shall be revised as necessary to ensure compliance with the Storm Water Permit.

6 77. Section B(4)(a) of the 1997 Permit and Section XI(A) of the 2015 Permit require
7 dischargers to conduct monthly visual observations of stormwater discharges.

8 78. Section B(4)(c) of the 1997 Permit and Section XI(A)(2) of the 2015 Permit requires
9 dischargers to document the presence of any floating and suspended materials, O&G, discolorations,
10 turbidity, or odor in the discharge, and the source of any pollutants in stormwater discharges from the
11 facility. Dischargers are required to maintain records of observations, observation dates, discharge
12 locations observed, and responses taken to reduce or prevent pollutants from contacting stormwater
13 discharges. *See* 1997 Permit, Section B(4)(c); 2015 Permit, Section XI(A)(3). The Storm Water Permit
14 also requires dischargers to revise the SWPPP as necessary to ensure that BMPs are effectively reducing
15 and/or eliminating pollutants at the facility. 1997 Permit, Section B(4)(c); 2015 Permit, Section X(B)(1).

16 79. The Storm Water Permit requires dischargers to visually observe and collect samples of
17 stormwater discharges from all locations where stormwater is discharged. 1997 Permit, Sections B(5)
18 and B(7); 2015 Permit Section XI(B)(4).

19 80. Section B(5)(a) of the 1997 Permit requires dischargers to collect stormwater samples
20 during the first hour of discharge from the first storm event of the Wet Season and at least one other
21 storm event in the Wet Season. All stormwater discharge locations must be sampled. Facility operators
22 that do not collect samples from the first storm event of the Wet Season are still required to collect
23 samples from two other storm events of the Wet Season and must explain in the Annual Report why the
24 first storm event was not sampled.

25 81. Section B(5)(b) of the 1997 Permit requires that sampling conducted pursuant to the
26 Storm Water Permit occur during scheduled facility operating hours that are preceded by at least three
27 (3) working days without stormwater discharge.
28

1 82. Section B(5)(c)(i) of the 1997 Permit requires dischargers to analyze each sample for pH,
2 specific conductance ("SC"), TSS, and TOC. A discharger may substitute analysis for O&G instead of
3 TOC.

4 83. Section B(5)(c)(ii) of the 1997 Permit requires dischargers to analyze each sample for
5 toxic chemicals and other pollutants likely to be present in significant quantities in the stormwater
6 discharged from the facility.

7 84. Section B(5)(c)(iii) and Table D of the 1997 Permit, require Facilities classified as
8 Standard Industrial Classification ("SIC") code 5093, such as the HSR Facility, to also analyze
9 stormwater samples for chemical oxygen demand ("COD"), iron ("Fe"), zinc ("Zn"), aluminum ("Al"),
10 copper ("Cu") and lead ("Pb"). 1997 General Permit, Table D; 2015 General Permit Tables 1-2.

11 85. Section B(5)(c)(iii) and Table D of the 1997 Permit, require Facilities classified as
12 Standard Industrial Classification ("SIC") code 4953, such as the HSR Facility, to also analyze
13 stormwater samples for iron ("Fe"). 1997 General Permit, Table D; 2015 General Permit Tables 1-2.

14 86. Section B(14) of the 1997 Permit requires that dischargers submit an Annual Report to
15 the applicable Regional Board by July 1 of each year. The Annual Report must include a summary of
16 visual observations and sampling results, an evaluation of the visual observations and sampling and
17 analysis results, laboratory reports, the annual comprehensive site compliance evaluation report
18 specified in Section A(9), an explanation of why a facility did not implement any activities required, and
19 the records specified in Section B(13)(i).

20 87. Section B(15)(f) of the 1997 Permit requires that sampling and analysis be performed
21 according to Section B of the 1997 Permit.

22 88. Section XI(B)(1) of the 2015 Permit requires sampling if a precipitation event produces a
23 discharge for at least one drainage area, and it is preceded by forty-eight (48) hours with no discharge
24 from any drainage area ("Qualifying Storm Event" or "QSE").

25 89. Section XI(B)(2) of the 2015 Permit requires dischargers to collect and analyze
26 stormwater samples from two (2) QSEs within the first half of each reporting year (July 1 to December
27 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).
28

90. Section XI(B)(6) of the 2015 Permit requires dischargers to analyze stormwater samples for TSS, O&G, pH, additional parameters identified by the discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment, additional applicable industrial parameters related to receiving waters with 303(d) listed impairments or approved TMDLs, and additional parameters required by the Regional Water Board.

91. Table 1 of the 2015 Permit requires Facility under SIC code 5093, such as the HSR Facility, to analyze stormwater samples for iron, lead, aluminum, zinc and COD. 2015 General Permit Tables 1-2. The HSR Facility's June 2015 SWPPPs also requires testing for Copper ("Cu"), with reference in the SWPPP to SIC Code 5093.

92. Section XVI of the 2015 Permit requires dischargers to submit an annual report with a Compliance Checklist that indicates whether a Discharger complies with, and has addressed all applicable requirements of this General Permit, an explanation for any non-compliance of requirements within the reporting year, as indicated in the Compliance Checklist, an identification, including page numbers and/or Sections, of all revisions made to the SWPPP within the reporting year, and the date(s) of the Annual Evaluation.

V. STATEMENT OF FACTS

A. The Humboldt Sanitation Recycle Facility Site Description

93. The HSR Facility is located at to 2585 Central Avenue, in unincorporated McKinleyville, Humboldt County, CA 95519. The Facility is an approximately 7-acre Scrap and Waste Materials facility consisting of industrial buildings, including waste materials transfer station, a metals recovery facility, offices and maintenance shops and areas, parking areas for customers, employees, and a fleet of waste trucks and trailers, bailing shed, a loading dock and ramp, for receiving, sorting, baling and transferring waste, ferrous and non-ferrous scrap metal and recyclable materials, an electronic waste area storage area and separate electronic waste processing area, used tire area, a battery and antifreeze waste storage area, a hazardous materials locker, a green waste area, areas for waste bins and carts, bone yards, truck and equipment repair and cleaning areas, and a commercial truck scale. The industrial activities of the HSR Facility fall under Standard Industrial Classification ("SIC") Code 5093 – Scrap and Waste Metals, and 4953 – Landfills and Land Application Facilities.

1 94. Industrial operations and activities taking place at the HSR Facility include but are not
2 limited to: receiving, handling and transferring of municipal solid waste, construction & demolition
3 debris and green waste; public drop-off of recyclables, electronic waste, scrap metal, appliances, used
4 motor oil & oil filters, construction and demolition debris, used antifreeze, kitchen grease, tires and
5 batteries; storage of recycled landscape products (wood chips, compost); temporary storage of
6 household hazardous waste; re-use areas; equipment and vehicle repair and washing; and California
7 Redemption Value buyback (individuals trading recyclables for money). Large-haul waste is received at
8 the site and materials are sorted. Tires are accepted. Public drop-off boxes and areas are located at the
9 HSR Facility, and drop-offs include, aluminum, glass and glass bottles, scrap metal, and electronic
10 waste. Hazardous household waste is accepted on a continuous basis into a designated area.

11 95. The HSR Facility collects and discharges polluted stormwater associated with industrial
12 activities pursuant to the General Permit through at least one discharge point, which flows into Widow
13 White Creek, a tributary to the Mad River. Widow White Creek and the Mad River are waters of the
14 United States within the meaning of the CWA. Upon information and belief, there are other locations at
15 the HSR Facility discharging stormwater associated with industrial activities, namely from borders and
16 other runoff areas of the HSR Facility. These discharges also enter the Widow White Creek. The HSR
17 Facility SWPPP lacks enough detail to identify stormwater flow patterns, discharge and drainage plans
18 or infrastructure, or the location of the primary discharge point, listed in publicly available materials as
19 "Outflow Pipe."

20 96. Information available to Baykeeper suggests that the HSR Facility discharges quantities
21 of unauthorized non-stormwater. Activities at the HSR Facility resulting in unauthorized non-
22 stormwater discharges include but are not limited to, truck and cart washing, fluids from dumping or
23 unloading waste, recycling and other material, fueling, replenishing fluid levels and using equipment
24 with hydraulic oil, and cleaning/flushing of storm drains and inlets.

25 97. Baykeeper is informed and believes, and thereon alleges, that the HSR Facility's areas
26 described herein, lack adequate cover or secondary containment, and certain industrial activities occur
27 outside without adequate cover or secondary containment, resulting in discharges of polluted
28 stormwater. Vehicle and other traffic at the HSR Facility track dust and particulate matter, increasing the

1 discharge of polluted water, sediments and debris into waters of the United States.

2 **B. The Mad River**

3 98. The Mad River watershed is approximately 100 miles long and drains about 500 square
4 miles of coastal hills within Humboldt County. Mountain range elevations are from 6,000 feet at the
5 headwaters to 3,000 feet along the western ridge. The Mad River flows through, around and over a
6 variety of Franciscan bedrock geology, composed of greywacke sandstone, limestone, serpentinite,
7 shale, metamorphic and sedimentary rocks. Surrounding vegetation is composed of coniferous forest
8 (Douglas Fir, Spruce, and Redwood) toward the coast, while upland and interior are mixed hardwood
9 forest, grassland, and in some areas riparian canopy. The Mad River watershed is partitioned into three
10 sub-watersheds: The Upper Mad River begins at the upper headwaters and concludes at Matthews Dam
11 on Ruth Lake; the Middle Mad River extends from Matthews Dam downstream to the confluence of
12 Cowen Creek; and the Lower Mad River runs from Cowen Creek through the estuary and to the mouth
13 where the Mad River empties into the Pacific Ocean. The Mad River estuary is recognized for protection
14 by the California Bays and Estuaries Policy.⁴

15 99. The Mad River is the source of drinking water for approximately 65% of Humboldt
16 County's Population. The Humboldt Bay Municipal Water District (HBMWD) formed on March 19,
17 1956, and is currently supplying drinking water to 80,000 Humboldt County residents in the cities of
18 Blue Lake, Arcata, Eureka, and the unincorporated areas of McKinleyville, Fieldbrook, Glendale,
19 Manila, and other rural residential areas within the county.⁵

20 100. The Mad River Watershed provides habitat to a wide array of flora and fauna surviving
21 within the riparian corridor from the headwaters to the estuary. A number of species listed as threatened
22 or endangered under the Endangered Species Act, live in and around the Mad River, including but not
23 limited to: chinook, coho and steelhead salmonids, eulachon and longfin smelt, willow fly catcher,
24 western spotted owl, and the yellow billed cuco. Sensitive amphibians also reside in the Mad River such
25 as the northern red legged frog and the western pond turtle.⁶

26
27 ⁴ Water Quality Control Policy For The Enclosed Bays and Estuaries of California as Adopted by Resolution. 95-84, State of
California 11/16/95

28 ⁵ Humboldt Bay Municipal Water District, Habitat Conservation Plan

⁶ http://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/mad_river/pdf/120329/FINAL_PDF_MRWA.PDF
(last accessed November 14, 2016).

D. The HSR Facility Storm Water Permit Coverage

101. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or Operators of the HSR Facility submitted an NOI for coverage under the 1997 Permit.

102. Baykeeper is not currently in possession of NOI or a SWPPP submitted prior to 2015, to cover the HSR Facility, but Baykeeper is informed and believes, and thereon alleges, that the Owners and/or Operators previously submitted NOI(s) for coverage under the 1997 Permit. Further information about coverage under the 1997 permit will be sought in discovery.

103. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or Operators of recently submitted an NOI for their industrial operations at the HSR Facility on or about May 19, 2015, for coverage under the 2015 Permit.

104. The State Board's electronic database, called the Storm Water Multiple Application & Report Tracking System ("SMARTS"), lists the current HSR Facility Waste Discharge Identification ("WDID") number as 1 12I012825. SMARTS lists the HSR Facility's coverage under the Storm Water Permit as "Active."

105. The NOI for the HSR Facility identifies the receiving water for discharges and runoff from the HSR Facility to be Widow White Creek.

106. Via search of the SMARTS database, Baykeeper obtained a SWPPP for the HSR Facility dated June 2015 ("HSR Facility SWPPP").

107. BAYKEEPER is informed and believes, and thereon alleges, that the Facility's SWPPPs fail to describe and/or adequately describe all of the Facility industrial activities or processes.

108. Baykeeper is informed and believes, and thereon alleges, that because the HSR Facility's SWPPP fails to describe and/or adequately describe all of the HSR Facility industrial activities, the HSR Facility's SWPPP also fails to describe and/or adequately describe all of the significant materials and processes that are related to the HSR Facility's industrial activities.

109. Baykeeper is informed and believes, and thereon alleges, that pollutants associated with the HSR Facility include, but are not limited to: pH-affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; chemical oxygen demand ("COD"); BOD; TSS; benzene; pesticides; gasoline and diesel fuels; TKN, trash;

1 fugitive and other dust and dirt; and O&G.

2 110. Baykeeper is informed and believes, and thereon alleges, that without properly
3 identifying all industrial activities or all significant materials at the HSR Facility in the SWPPP, the
4 Owners and/or Operators have not developed and/or implemented all appropriate BMPs.

5 111. Baykeeper is informed and believes, and thereon alleges, that the HSR Facility SWPPP
6 includes no assessments and/or no adequate assessments of potential pollutant sources, the associated
7 pollutants, and the corresponding BMPs at the Facility.

8 112. Baykeeper is informed and believes, and thereon alleges, that the HSR Facility SWPPP
9 includes no description and/or no adequate description of the HSR Facility BMPs, analyses of the
10 effectiveness of the BMPs, or summaries of the BMPs by pollutant source.

11 113. Baykeeper is informed and believes, and thereon alleges, that Owners and/or Operators
12 have failed and continue to fail to develop the HSR Facility SWPPP and site-specific BMPs consistent
13 with Section A of the 1997 Permit, and Section X of the 2015 Permit.

14 114. Baykeeper is informed and believes, and thereon alleges, that Defendants' HSR Facility
15 SWPPP fails and continues to fail to include an adequate: (1) list of significant materials handled and
16 stored at the site; (2) description of potential pollutant sources including industrial processes, material
17 handling and stockpiling areas, dust and particulate generating activities; (3) description of significant
18 spills and leaks; or (4) list of all non-stormwater discharges and their sources; Section A of the 1997
19 Permit and Section X of the 2015 Permit.

20 115. Baykeeper is informed and believes, and thereon alleges, that stormwater sampling at the
21 HSR Facility demonstrate that HSR Facility's stormwater discharges contain concentrations of
22 pollutants above the Benchmark Levels, including but not limited to aluminum, copper, iron, zinc, COD,
23 and TSS.

24 116. Baykeeper is informed and believes, and thereon alleges, that the repeated and significant
25 exceedances of Benchmark Levels demonstrate that the Owners and/or Operators have failed and
26 continue to fail to develop and/or implement BMPs to prevent the exposure of pollutants to stormwater
27 and to prevent discharges of polluted stormwater and non-stormwater from the HSR Facility.

28 117. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or

1 Operators have failed and continue to fail to adequately revise the HSR Facility SWPPP, despite
2 repeated and significant concentrations of pollutants in the HSR Facility's stormwater discharges, make
3 changes to the HSR Facility's training programs, or make any other changes based upon events that
4 would signal a need for required revisions or alteration of practices.

5 118. Baykeeper is informed and believes, and thereon alleges, that some of the HSR Facility's
6 industrial operations are conducted outdoors without secondary containment or other measures to
7 prevent polluted stormwater from discharging from the HSR Facility.

8 119. Baykeeper is informed and believes, and thereon alleges, that pollutants, including but
9 not limited to those referenced herein, have been and continue to be tracked throughout the HSR
10 Facility's operation areas and offsite.

11 120. Baykeeper is informed and believes, and thereon alleges, that these pollutants are
12 deposited into water bodies, and onto streets and/or into storm drains adjacent to the HSR Facility via
13 fugitive dust and other means, including but not limited to dust generated by wind, equipment and
14 vehicles.

15 121. Baykeeper is informed and believes, and thereon alleges, that trucks and vehicles leaving
16 the HSR Facility via staging areas and driveways are pollutant sources tracking sediment, dirt, oil and
17 grease, pesticides, metal particulates, and other pollutants off-site.

18 122. Baykeeper is informed and believes, and thereon alleges, that the Owners' and/or
19 Operators' failure to properly address pollutant sources and pollutants results in the exposure of
20 pollutants associated with their industrial activities to precipitation, and that this results in discharges of
21 polluted stormwater from the HSR Facility and into local waterways in violation of the Storm Water
22 Permit and/or the Clean Water Act.

23 123. Baykeeper is informed and believes, and thereon alleges, that BAT/BCT for the HSR
24 Facility is full enclosure of all uncovered bulk material stockpiles, and industrial operations that cause
25 the spread and release of pollutants, and cleanup of any waste materials, and unused, broken, or legacy
26 equipment at the HSR Facility.

27 124. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed to
28 achieve compliance with BAT/BCT requirements by failing to fully enclose bulk material stockpiles,

1 waste materials, industrial operations that cause the spread and release of pollutants, and unused, broken
2 or legacy equipment.

3 125. Baykeeper is informed and believes, and thereon alleges, that the Owners' and/or
4 Operators' failure to properly address these pollutants and their sources results in the exposure of
5 pollutants to precipitation, which carries these pollutants with stormwater flows from the HSR Facility
6 into Widow White Creek and the Mad River.

7 126. Baykeeper is informed and believes, and thereon alleges, that Defendants' failure to
8 properly address these pollutants and their sources results in the discharge of fugitive dust, including but
9 not limited to dust generated by industrial operations, wind, equipment, and vehicles, which carries these
10 pollutants to off-site waterbodies, and to off-site properties, streets and storm drains adjacent to the
11 Facility. Pollutants deposited off-site eventually flow into the Widow White Creek and the Mad River.

12 **E. Stormwater Discharges at the HSR Facility**

13 127. The Owners and/or Operators represent that there is only one (1) discharge point at the
14 HSR Facility, called the Outflow Pipe. Information obtained from SMARTS lists Outflow Pipe as the
15 only sampling point tested in submitted laboratory sampling and testing reports. The HSR Facility
16 SWPPP provides no other discernable information regarding stormwater flow, stormwater collection
17 inlets, sampling points, or stormwater discharge points. Upon information and belief, the HSR Facility
18 NOI is the only document currently available on SMARTS identifying the stormwater discharge
19 Receiving Water as Widow White Creek.

20 **F. The HSR Facility's Stormwater Discharges to the Receiving Waters Contain**
21 **Elevated Levels of Pollutants**

22 128. Baykeeper is informed and believes, and thereon alleges, that pollutants from the HSR
23 Facility discharge from more than one discharge point into Widow White Creek and the Mad River.

24 129. The EPA promulgated regulations for the Section 402 NPDES permit program defining
25 waters of the United States. *See* 40 C.F.R. § 122.2. The EPA interprets waters of the United States to
26 include not only traditionally navigable waters but also other waters, including waters tributary to
27 navigable waters, wetlands adjacent to navigable waters, and other waters including intermittent streams
28 that could affect interstate commerce. The CWA requires any person who discharges or proposes to

1 discharge pollutants into waters of the United States to submit an NPDES permit application. 40 C.F.R.
2 § 122.21.

3 130. Baykeeper is informed and believes, and thereon alleges, Widow White Creek and the
4 Mad River, the Receiving Waters herein, are waters of the United States, and/or a tributary to a
5 traditionally navigable water.

6 131. Baykeeper is informed and believes, and thereon alleges, that polluted stormwater and
7 non-stormwater discharges from the HSR Facility to the Receiving Waters.

8 132. Stormwater discharges containing pollutants, including but not limited to, heavy metals
9 such as zinc, aluminum, and iron adversely affect the aquatic environment.

10 133. Samples of stormwater discharges collected at the Facility contain pollutants including
11 zinc, iron, aluminum, copper, and COD, in excess of levels known to adversely impact aquatic species
12 and the environment, federal regulations, WQS, EPA Benchmarks, and the CTR in violation of the
13 Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

14 134. Baykeeper is informed and believes, and thereon alleges, that during and/or after every
15 significant rain event⁷ or any other stormwater or non-stormwater discharge that has occurred at the
16 Facility since September 27, 2011 through the present, Defendants have discharged and continue to
17 discharge stormwater and non-stormwater from the HSR Facility that contains concentrations of
18 pollutants at levels that violate the prohibitions and limitations set forth in the Storm Water Permit, the
19 Federal Effluent Limitations, the EPA Benchmarks, CTR, and the WQS.

20 **G. Defendants' Failure to Comply with the Storm Water Permit's Sampling,**
21 **Reporting, and Monitoring Requirements**

22 135. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and
23 continue to fail to develop an adequate M&RP for industrial operations at the HSR Facility that
24 complies with Section B of the 1997 Permit, and Section XI of the 2105 Permit.

25 136. September 27, 2011 is informed and believes, and thereon alleges, that Defendants failed
26 and continue to fail to revise the M&RP for the HSR Facility as necessary to ensure compliance with the
27 1997 Permit, in violation of Section B(2)(d), and Section XI of the 2105 Permit.

28 ⁷ A significant rain event is an event that produces stormwater runoff, which according to EPA occurs with more than 0.1 inches of precipitation.

1 137. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and
2 continue to fail to collect samples during the first hour of the first storm event of the Wet Season over
3 the past five years, in violation of Section B(5)(a) of the 1997 Permit and Section XI(B) of the 2015
4 Permit.

5 138. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and
6 continue to fail to analyze stormwater samples collected at the HSR Facility for all toxic chemicals and
7 other pollutants likely to be present in significant quantities in the stormwater discharges, in violation of
8 Section B(5) of the 1997 Permit and Section XI(B) of the 2015 Permit.

9 139. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and
10 continue to fail to demonstrate that stormwater sampling limited to those listed in the HSR Facility's
11 2015 SWPPP, is representative of pollutants from the HSR Facility, in violation of Section B(5) of the
12 1997 Permit and Section XI(B) of the 2015 Permit.

13 140. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed and
14 continue to fail to sample stormwater discharges from all discharge locations, in violation of Section
15 B(7) of the 1997 Permit and Sections XI(B) and XI(C) of the 2015 Permit.

16 141. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and
17 continue to fail to adequately revise the M&RP for the HSR Facility as necessary to ensure compliance
18 with the Storm Water Permit in violation of Sections A(9) and A(10) of 1997 Permit and Sections XI(B)
19 and XI(C) of the 2015 Permit.

20 142. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or
21 Operators of the HSR Facility consistently fail to perform visual observations of stormwater during
22 QSEs.

23 143. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or
24 Operators of the HSR Facility have consistently failed and continue to fail to report any noncompliance
25 with the Storm Water Permit at the time that the Annual Report is submitted, including: 1) a description
26 of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not
27 been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce
28 and prevent recurrence of the noncompliance as required by the 1997 Permit, Section C(11)(d).

1 144. Baykeeper is informed and believes, and thereon alleges, that Defendants' certifications
2 of compliance with the 1997 Permit in each of its past five (5) Annual Reports, provided the Annual
3 Reports were in fact submitted, were erroneous because Defendants have not developed and/or
4 implemented the required BMPs, or revised the SWPPP or the M&RP, as required by Sections A and B
5 of the 1997 Permit.

6 145. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or
7 Operators of the HSR Facility consistently fail to collect stormwater samples during QSEs.

8 146. Baykeeper is informed and believes, and thereon alleges, that Defendants have failed to
9 submit complete Annual Reports to the Regional Board in violation of Section B(14) of the 1997 Permit.

10 **VI. CLAIMS FOR RELIEF**

11 **FIRST CAUSE OF ACTION**

12 **Discharges of Contaminated Stormwater in Violation of
the Storm Water Permit's Effluent Limitations and the Clean Water Act.**

13 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

14 147. Baykeeper incorporates the allegations contained in the above paragraphs as though fully
15 set forth herein.

16 148. Baykeeper is informed and believes, and thereon alleges, that Defendants failed and
17 continue to fail to reduce or prevent pollutants associated with industrial activities at the HSR Facility
18 from discharging from the Facility through implementation of BMPs that achieve BAT/BCT.

19 149. Baykeeper is informed and believes, and thereon alleges, that discharges of stormwater
20 containing levels of pollutants that do not achieve compliance with BAT/BCT standards from the HSR
21 Facility occur every time stormwater discharges from the HSR Facility. Defendants' failure to develop
22 and/or implement BMPs that achieve the pollutant discharge reductions attainable via BAT or BCT at
23 the HSR Facility is a violation of the Storm Water Permit and the CWA. *See* 1997 Permit, Effluent
24 Limitation B(3); 2015 Permit, Section I(D) (Finding 32), Effluent Limitation V(A); 33 U.S.C. § 1311(b).

25 150. The Owners and/or Operators violate and will continue to violate the Storm Water
26 Permit's Effluent Limitations each and every time stormwater containing levels of pollutants that do not
27 achieve BAT/BCT standards discharges from the HSR Facility.
28

1 151. BAYKEEPER is informed and believes, and thereon alleges, that the Owners' and/or
2 Operators' violations of Effluent Limitations of the Storm Water Permit and the Clean Water Act are
3 ongoing and continuous.

4 152. Each day since at least September 27, 2011 that the Owners and/or Operators discharge
5 stormwater containing pollutants in violation of the Storm Water Permit is a separate and distinct
6 violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

7 153. By committing the acts and omissions alleged above, the Owners and/or Operators are
8 subject to an assessment of civil penalties for each and every violation of the CWA occurring from
9 December 6, 2011 to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§
10 1319(d), 1365, and 40 C.F.R. § 19.4.

11 154. An action for injunctive relief is authorized by CWA Section 505(a), 33 U.S.C. §
12 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm
13 Plaintiffs and the citizens of the State of California, for which harm Baykeeper has no plain, speedy, or
14 adequate remedy at law.

15 155. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual
16 controversy exists as to the rights and other legal relations of the Parties.

17 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth hereafter.

18 **SECOND CAUSE OF ACTION**

19 **Defendants' Discharges of Contaminated Stormwater in Violation of**
20 **the Storm Water Permit's Receiving Water Limitations and the Clean Water Act.**
21 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

22 156. Baykeeper incorporates the allegations contained in the above paragraphs as though fully
23 set forth herein.

24 157. Baykeeper is informed and believes, and thereon alleges, that discharges of stormwater
25 containing levels of pollutants that adversely impact human health and/or the environment from the HSR
26 Facility occur each time stormwater discharges from the HSR Facility.

27 158. Baykeeper is informed and believes, and thereon alleges, that stormwater containing
28 levels of pollutants that cause or contribute to exceedances of water quality standards has discharged and
continues to discharge from the HSR Facility each time stormwater discharges from the HSR Facility.

1 159. The Owners and/or Operators violate and will continue to violate the Storm Water
2 Permit's Receiving Water Limitations each and every time stormwater containing levels of pollutants
3 that adversely impact human health and/or the environment, and that cause or contribute to exceedances
4 of WQS, discharges from the HSR Facility.

5 160. Baykeeper is informed and believes, and thereon alleges, that the Owners' and/or
6 Operators' violations of Receiving Water Limitations of the Storm Water Permit and the CWA are
7 ongoing and continuous.

8 161. Each and every violation of the Storm Water Permits' Receiving Water Limitations is a
9 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

10 162. By committing the acts and omissions alleged above, the Owners and/or Operators are
11 subject to an assessment of civil penalties for each and every violation of the CWA occurring from
12 September 27, 2011 to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§
13 1319(d), 1365, and 40 C.F.R. § 19.4.

14 163. An action for injunctive relief under the Clean Water Act is authorized by Section 505(a),
15 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably
16 harm Plaintiff, Plaintiff's members, and the citizens of the State of California, for which harm they have
17 no plain, speedy, or adequate remedy at law.

18 164. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual
19 controversy exists as to the rights and other legal relations of the Parties.

20 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth hereafter.

21 **THIRD CAUSE OF ACTION**

22 **Defendants' Discharges of Non-Stormwater in Violation**
23 **of the Storm Water and the Clean Water Act.**

24 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

25 165. Baykeeper incorporates the allegations contained in the above paragraphs as though fully
26 set forth herein.

27 166. Baykeeper is informed and believes, and thereon alleges, that prohibited non-stormwater
28 discharges have discharged and continue to discharge from the HSR Facility, in violation of the Storm
Water Permit and/or CWA Section 301(a), 33 U.S.C. § 1311(a).

1 167. Baykeeper is informed and believes, and thereon alleges, that the Owners' and/or
2 Operators' violations of Discharge Prohibitions of the Storm Water Permit are ongoing and continuous.

3 168. Each and every violation of the Storm Water Permit's Discharge Prohibitions is a
4 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

5 169. By committing the acts and omissions alleged above, the Owners and/or Operators are
6 subject to an assessment of civil penalties for each and every violation of the CWA occurring from
7 September 27, 2011 to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§
8 1319(d), 1365, and 40 C.F.R. § 19.4.

9 170. An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a).
10 Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff, its
11 members, and the citizens of the State of California, for which harm they have no plain, speedy, or
12 adequate remedy at law.

13 171. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual
14 controversy exists as to the rights and other legal relations of the Parties.

15 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth hereafter.

16 **FOURTH CAUSE OF ACTION**

17 **Defendants' Failure to Adequately Develop, Implement, and/or**
18 **Revise a Storm Water Pollutant Prevention Plan in Violation of the**
19 **Storm Water Permit and the Clean Water Act.**
20 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

21 172. Baykeeper incorporates the allegations contained in the above paragraphs as though fully
22 set forth herein.

23 173. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or
24 Operators have failed and continue to fail to develop an adequate SWPPP for the HSR Facility, in
25 violation of the Storm Water Permit.

26 174. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or
27 Operators have failed and continue to fail to adequately implement a SWPPP for the HSR Facility, in
28 violation of the Storm Water Permit.

175. Baykeeper is informed and believes, and thereon alleges, that Owners and/or Operators
have failed and continue to fail to adequately revise a SWPPP for the HSR Facility, in violation of the

1 Storm Water Permit.

2 176. The Owners and/or Operators have been in violation of the Storm Water Permit at the
3 Facility every day from September 27, 2011 to the present.

4 177. The Owners' and/or Operators' violations of the Storm Water Permit and the CWA at the
5 HSR Facility are ongoing and continuous.

6 178. The Owners and/or Operators will continue to be in violation of the Storm Water Permit
7 and the CWA each and every day the Owners and/or Operators fail to adequately develop, implement,
8 and/or revise the SWPPP for the HSR Facility.

9 179. Each and every violation of the Storm Water Permit's SWPPP requirements at the HSR
10 Facility is a separate and distinct violation of the CWA.

11 180. By committing the acts and omissions alleged above, the Owners and/or Operators are
12 subject to an assessment of civil penalties for each and every violation of the CWA occurring from
13 September 27, 2011 to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§
14 1319(d), 1365, and 40 C.F.R. § 19.4.

15 181. An action for injunctive relief under the CWA is authorized by Section 505(a) of the
16 CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would
17 irreparably harm Baykeeper, its members, and the citizens of the State of California, for which harm
18 they have no plain, speedy, or adequate remedy at law.

19 182. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual
20 controversy exists as to the rights and other legal relations of the Parties.

21 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth hereafter.

22 **FIFTH CAUSE OF ACTION**

23 **Defendants' Failure to Adequately Develop, Implement, and/or**
24 **Revise a Monitoring and Reporting Plan in Violation of**
25 **the Storm Water Permit and the Clean Water Act.**
26 **U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

27 183. Baykeeper incorporates the allegations contained in the above paragraphs as though fully
28 set forth herein.

184. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or
Operators have failed and continue to fail to develop an adequate M&RP for the HSR Facility, in

1 violation of the Storm Water Permit.

2 185. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or
3 Operators have failed and continue to fail to adequately implement an M&RP for the HSR Facility, in
4 violation of the Storm Water Permit.

5 186. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or
6 Operators have failed and continue to fail to adequately revise an M&RP for the HSR Facility, in
7 violation of the Storm Water Permit.

8 187. The Owners and/or Operators have been in violation of the Storm Water Permit's
9 monitoring requirements at the HSR Facility every day from September 27, 2011 to the present.

10 188. The Owners' and/or Operators' violations of their Storm Water Permit's monitoring
11 requirements and the CWA at the HSR Facility are ongoing and continuous.

12 189. The Owners and/or Operators will continue to be in violation of Section B and Provision
13 E(3) the 1997 Permit, Section XI of the 2015 Permit, and the CWA each and every day they fail to
14 adequately develop, implement, and/or revise an M&RP for the HSR Facility.

15 190. Each and every violation of the Storm Water Permit's M&RP requirements at the HSR
16 Facility is a separate and distinct violation of the CWA.

17 191. By committing the acts and omissions alleged above, the Owners and/or Operators are
18 subject to an assessment of civil penalties for each and every violation of the CWA occurring from
19 September 27, 2011 to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§
20 1319(d), 1365, and 40 C.F.R. § 19.4.

21 192. An action for injunctive relief under the CWA is authorized by Section 505(a) of the
22 CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would
23 irreparably harm Baykeeper, its members, and the citizens of the State of California, for which harm
24 they have no plain, speedy, or adequate remedy at law.

25 193. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual
26 controversy exists as to the rights and other legal relations of the Parties.

27 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth hereafter.
28

SIXTH CAUSE OF ACTION

**Defendants' Failure to Report as Required by the Storm Water
Permit in Violation of the Storm Water Permit and the
Clean Water Act.**

33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)

194. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

195. Receiving Water Limitation C(3) of the 1997 Permit requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to current BMPs in order to prevent or reduce any pollutant in stormwater discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, those BMPs must be implemented into the HSR Facility SWPPP.

196. Receiving Water Limitation C(4)(a) of the 1997 Permit requires the report to be submitted to the Regional Board no later than 60-days from the date the discharger first learns its discharge is causing or contributing to an exceedance of an applicable water quality standard. Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance.

197. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or Operators have failed and continue to fail to submit accurate Annual Reports to the Regional Board for the HSR Facility, in violation of Sections B(14), C(9), and C(10) of the 1997 Permit.

198. Baykeeper is informed and believes, and thereon alleges, that the Owners' and/or Operators' Annual Reports for the HSR Facility failed and continue to fail to meet the monitoring and reporting requirements of the Storm Water Permit, in violation of Section B(14) of the 1997 Permit.

199. Baykeeper is informed and believes, and thereon alleges, that the Owners and/or Operators have failed and continue to fail to submit complete Annual Reports for the HSR Facility to the Regional Board, in violation of Sections B(14), C(9), C(10) and C(11) of the 1997 Permit.

200. The Owners and/or Operators have been in violation of Sections B(14), C(9), C(10), and/or C(11) of the 1997 Permit and CWA every day since at least September 27, 2011.

201. The Owners and/or Operators have been in violation of the reporting requirements of the Storm Water Permit each day it has operated the HSR Facility without reporting as required by Receiving Water Limitations C(3) and C(4) of the 1997 Permit.

1 202. The Owners and/or Operators have been in violation of Receiving Water Limitations
2 C(3) and C(4) of the Storm Water Permit every day since at least September 27, 2011.

3 203. The Owners' and/or Operators' violations of the reporting requirements of the Storm
4 Water Permit and the CWA are ongoing and continuous.

5 204. By committing the acts and omissions alleged above, the Owners and/or Operators are
6 subject to an assessment of civil penalties for each and every violation of the CWA occurring from
7 September 27, 2011 to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§
8 1319(d), 1365, and 40 C.F.R. § 19.4.

9 205. An action for injunctive relief under the CWA is authorized by Section 505(a) of the
10 CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would
11 irreparably harm Baykeeper, its members, and the citizens of the State of California, for which harm
12 they have no plain, speedy, or adequate remedy at law.

13 206. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual
14 controversy exists as to the rights and other legal relations of the Parties.

15 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth hereafter.

16 **SEVENTH CAUSE OF ACTION**
17 **Defendants' Discharges of Pollutants without an NPDES Permit.**
18 **and Clean Water Act.**
19 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

20 207. Plaintiff incorporates the allegations contained in the above paragraphs as though fully
21 set forth herein.

22 208. Baykeeper is informed and believes, and thereon alleges, that storm water associated with
23 industrial activities discharges from the HSR Facility without Storm Water Permit coverage in violation
24 of the Storm Water Permit and/or Sections 301(a) of the Clean Water Act. 33 U.S.C. §§ 1311(a).

25 209. Every storm water discharge associated with industrial activities from the HSR Facility
26 without NPDES permit coverage is a separate and distinct violation of the Clean Water Act and the
27 Storm Water Permit.
28